

COASTAL CONSERVANCY

Staff Recommendation

June 16, 2005

MANAGEMENT OF MALIBU ACCESSWAYS

File No. 05-046

Project Manager: Joan Cardellino

RECOMMENDED ACTION: Authorization to disburse up to \$15,000 to Access For All to manage and maintain beach accessways in Malibu on easements held by Access For All.

LOCATION: Malibu, Los Angeles County

PROGRAM CATEGORY: Public Access

EXHIBITS

Exhibit 1: Regional Map

Exhibit 2: Easements held by AFA

Exhibit 3: Easements on Geffen Property

RESOLUTION AND FINDINGS:

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31400-31409 of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes the disbursement of up to fifteen thousand dollars (\$15,000) to Access For All (AFA) to manage beach accessways in Malibu on easements that have been dedicated pursuant to conditions of coastal development permits and that have been accepted and opened to the public by AFA, subject to the following conditions:

1. No Conservancy funds shall be disbursed until the Executive Officer of the Conservancy has reviewed and approved in writing any contractors to be used, and a final work plan, including a final budget and schedule, for use of these funds.
2. AFA shall manage beach access in accordance with the Management Plan for each easement approved by the Executive Director of the Coastal Commission and the Executive Officer of the Conservancy.”

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Staff further recommends that the Conservancy adopt the following findings:

“Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed project is consistent with the purposes and criteria set forth in Chapter 9 (Sections 31400-31409) of Division 21 of the Public Resources Code regarding the provision of a system of public accessways to and along the coast.
2. The proposed project is consistent with the Project Selection Criteria and Guidelines adopted by the Conservancy on January 25, 2001.”

PROJECT SUMMARY:

Staff recommends authorization to disburse up to \$15,000 to Access For All (AFA) to manage and maintain beach accessways in Malibu on easements that it holds. (See Exhibit 2.) The public access easements were dedicated pursuant to conditions of coastal development permits and have been accepted and opened to the public by AFA, a 501(c)(3) nonprofit organization established to support public coastal access in Malibu and approved by the Executive Director of the California Coastal Commission to accept and hold these easements pursuant to approved management plans.

AFA currently holds 22 coastal access easements, all of which are in Malibu. The opening of three of these easements, on property owned by David Geffen, was delayed for several years by a locked gate and lawsuit filed by Mr. Geffen. All of the parties have now agreed to a settlement of that lawsuit, a key has been provided to AFA, and the accessway is open to the public. AFA needs funding to pay for the operational costs of managing this accessway and possibly others that it has opened in the Malibu area. Some management tasks are interim and will last for only a few months, or until a gate with a timed lock mechanism can be installed. However, over the summer, staff anticipates that management activities will include such tasks as opening and closing the existing entrance gate each day, picking up litter, and directing visitors onto the public beach easement areas.

The management plans developed for the Malibu easements were designed to be in keeping with the practices of Los Angeles County, which opens its beach accessways at dawn and closes them at dusk. Until a gate with a timed lock can be installed on the Geffen easement, this will have to be done manually. The public access easements on the Geffen property are complicated by the fact that they are not contiguous. There is a gap of 51 feet between the vertical easement and the closest lateral easement. (See Exhibit 3.) Until a plan for signage can be developed, beach monitors will be needed to advise visitors where the public beach easements are located, to prevent trespass onto private areas of the property.

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While the most immediate need for operational funds is at the Geffen site, there are other sites that AFA is working to open, or that are already open to the public, where this funding assistance may also be needed. As the easement holder, AFA is responsible for managing the beach access easements for public use, according to the terms of the easements and individual management plans developed for each site prior to AFA's legal acceptance of the easement.

Site Description: The vertical beach access easement on Mr. Geffen's property is 9 feet wide and runs from Pacific Coast Highway to the mean high tide line, and is separated from the sidewalk by a wooden gate. The easement is paved for the first approximately 20 feet, and then extends onto the sandy beach. The lateral easements extend a total of 225 feet along the beach, but they vary in how far inland they extend from the mean high tide line. One lateral easement runs to the toe of the bulkhead, while the other two provide for a 10-foot privacy buffer seaward from the edge of the seawall.

Other easements held by AFA include four verticals and 17 lateral accessways on sandy beach parcels in Malibu and Del Mar. Many of the laterals are open to the public, but are difficult to reach. AFA is currently planning site improvements for several of the vertical easements.

Project History: All of the beach access easements held by AFA originated from Offers to Dedicate Public Access Easements (OTDs) that were recorded in compliance with conditions of coastal development permits. In Malibu, neither the City of Malibu nor Los Angeles County were willing to accept the public access OTDs that had been generated by the Coastal Commission and that were the responsibility of the Conservancy and the Commission to secure for public use. AFA was interested in accepting and managing the easements, and began accepting OTDs in 2001. In December 2004, the Conservancy approved a grant of \$35,000 to AFA to prepare a variety of site plans on several of the easements, as necessary precursors to developing them for public use. At the time, the lawsuit on the Geffen property was still pending, and staff did not anticipate that a settlement would occur as quickly as it did. Now that the terms of settlement have been reached, the Geffen accessway is open for public use and must be managed according to the management plan. Management funds provided under this grant can also be used to assist AFA in carrying out its responsibilities on other Malibu access easements that are currently open to the public or that can now be opened without the need for construction of site improvements.

PROJECT FINANCING:

Coastal Conservancy	\$15,000
Access For All	<u>\$1,000</u>
TOTAL	\$16,000

The anticipated source of Conservancy funding is the Coastal Access Account established pursuant to Public Resources Code Section 30620(c)(2). These funds are derived from Coastal Commission permit fees and are appropriated to the Conservancy to

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help in the development, maintenance and operation of new or existing coastal accessways.

CONSISTENCY WITH CONSERVANCY'S ENABLING LEGISLATION:

This project would be undertaken pursuant to Chapter 9 of Division 21 of the Public Resources Code, which assigns the Conservancy a principal role in the implementation of a system of public accessways to and along the state's coastline.

Section 31400.1 authorizes the Conservancy to provide grants to nonprofit organizations to operate or manage lands for public access purposes to and along the coast. In addition, section 31400.3 authorizes the Conservancy to provide such assistance as is required to aid public agencies and nonprofit organizations in establishing a system of public coastal accessways.

This project is also consistent with Section 31402.3, pertaining to the acceptance of offers to dedicate recorded pursuant to the Coastal Act and needed to provide public access to and along the coast. The Conservancy would be using Coastal Access Account funds to help AFA open these easements for public use (subsection (a)); would be entering into an agreement with a nonprofit organization for the management and public use of an accessway (subsection (b)); and AFA has met all the requirements laid out in subsection (c) for acceptance of OTDs by nonprofit organizations.

The proposed project is consistent with the City of Malibu Local Coastal Program as described in the Consistency with Local Coastal Program Policies below.

CONSISTENCY WITH CONSERVANCY'S STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):

Consistent with **Goal 2, Objective C**, this project will enable AFA to open to the public one or more public access easement(s) derived from OTDs.

CONSISTENCY WITH CONSERVANCY'S PROJECT SELECTION CRITERIA & GUIDELINES:

The proposed project is consistent with the Conservancy's Project Selection Criteria and Guidelines adopted January 24, 2001, in the following respects:

Required Criteria

1. **Promotion of the Conservancy's statutory programs and purposes:** See the "Consistency with Conservancy's Enabling Legislation" section above.
2. **Consistency with purposes of the funding source:** See the "Project Financing" section above.

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3. **Support of the public:** Since the public announcement of the settlement of the lawsuit on the Geffen easement, the Coastal Commission's Coastal Access Manager has received on average one call per day inquiring about when the accessway will be opened. Most of the calls are from people living on the inland side of Pacific Coast Highway, eager to use the new entrance to their local beach.
4. **Location:** The proposed project would be located within the coastal zone of the City of Malibu.
5. **Need:** AFA does not have the financial resources at this point to support the daily operational costs of managing the accessway on the Geffen property.
6. **Greater-than-local interest:** Beaches are popular destinations for residents of and visitors to the greater Los Angeles area. Although the dedicated easements are appropriate for lower intensity use, active management of these areas will increase the number, extent and variety of beach and surf environments that the area has to offer.

Additional Criteria

7. **Urgency:** The public has been denied access to the beach at the Geffen site for nearly 25 years, and the management plan for the accessway states that it should be opened as soon as possible. Now that the lawsuit has been settled, there is no reason to delay opening the accessway any further. The availability of these management funds will help AFA to establish a presence and to manage public use during the peak summer months of beach use at this and possibly other sites, to better inform future efforts to provide public access to Malibu and other beaches.
9. **Readiness:** With this grant, AFA will have the financial resources it needs to pay for on-site monitors at the Geffen easement site, and other sites as necessary on a short-term basis.
10. **Realization of prior Conservancy goals:** See "Project History" above.

CONSISTENCY WITH LOCAL COASTAL PROGRAM POLICIES:

Shoreline Access Policy 2.70 of the City of Malibu LCP states that Offers to Dedicate public access easements shall be accepted with the express purpose of developing them and opening them to the public. This project is consistent with this policy, since AFA accepted the OTDs and is now preparing to manage the sites for public use.

COMPLIANCE WITH CEQA:

The proposed Conservancy action would help to implement and effectuate public access policies of the Coastal Act, pursuant to approved coastal development permits. In the course of the development permit process and as part of its statutory responsibilities, the California Coastal Commission (or its regional commissions) previously undertook review and environmental assessment of the impacts associated with each specific development giving rise to the requirement of an offer to dedicate, and in doing so considered the need for and impact of the creation of the public access that was the end

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result of the offer. In this context, the California Coastal Commission is a “certified regulatory agency”, whose review is recognized as functionally equivalent to environmental assessment under the California Environmental Quality Act (CEQA). (CEQA Guidelines, 14 Cal. Code of Regulations, Section 15251(c); Public Resources Code Section 21080.5). Acceptance and opening of the dedicated accessways, and the proposed grant of funds to AFA for their management, simply effectuates the prior Coastal Commission determination that has already been assessed under a CEQA-equivalent process. The Conservancy could rely on the Coastal Commission analysis to conclude that these access projects meet the requirements of CEQA. Consistent with 14 Cal. Code of Regulations Section 15253, the environmental analysis document prepared for a project under a certified program – here, the relevant coastal development permits – can be used by another agency in granting approval for the same project under the circumstances present in this case.

But the provision of these management funds could not, of itself, have a significant effect on the environment and is therefore not an activity subject to CEQA (14 Cal. Code of Regulations Section 15061(b)(3)). And, to the extent that some or all of the access easements held by AFA are used for passive recreation, the proposed project would also be categorically exempt from CEQA pursuant to 14 Cal. Code of Regulations Section 15301, which pertains to the operation, maintenance, and minor alteration of existing public and private structures, facilities or topographical features involving negligible or no expansion of use beyond that existing at the time of this determination. The passive recreational use permitted on these easements is consistent with current and past uses by private owners, and many of the lateral shoreline easements are currently being used by the public.